


AURORA POLICE DEPARTMENT
DIRECTIVES MANUAL

08.03	Title: COURT	
	Approved By: Nick Metz, Chief of Police	
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	References:	
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8.3 COURT

It is the policy of the Aurora Police Department that appearances in court and at administrative hearings related to the member's scope of employment with the department and required pursuant to a subpoena, court order, or other departmental notification will constitute a mandatory duty assignment. Members who are late, fail to appear, or fail to respond to cases for court or an administrative hearing as directed may face disciplinary action in addition to any penalty that may be imposed by the court or administrative official.

Members required to appear in court or at an administrative hearing, pursuant to a subpoena, summons, or other court order on an action not directly related to the member's scope of employment with the department are considered to be off-duty. These situations include, but are not limited to:

- Jury Duty
- Civil Actions not related to the member's scope of employment (e.g., divorce proceedings, custody hearings, etc.)

In these cases, members are prohibited from wearing any department issued uniform or using his/her police credentials in order to be armed. Members must follow the guidelines of that court.

8.3.1 Court Liaison Authority and Responsibilities

(a) Acceptance and Refusal of Service

Court Liaison is authorized to accept subpoenas from all courts or administrative tribunals arising from criminal or civil cases, which are related to the member's

employment at the Aurora Police Department, unless otherwise directed by the Police Legal Advisor or the City Attorney's Office.

Court Liaison will accept all subpoenas for members, including civil subpoenas that are duty related except for civil subpoenas where the member or the city is the defendant. When the member or the city is the defendant of a civil subpoena, Court Liaison will have the process server contact the police legal advisor or the City Attorney's office.

If the member has a concern with the civil subpoena received (time, scope, conflicts, not-the members-case, etc.), the member will contact the police legal advisor as soon as possible before the date of the hearing or trial. The legal advisor will attempt to coordinate with the attorney who issued the subpoena to try to address the member's concerns. Until such time that the subpoena is changed, the member is still under subpoena and must appear on the ordered date and time.

Court Liaison is authorized to attempt to refuse acceptance of any subpoenas or administrative notices if the scheduled appearance is less than five days from the time it is presented to Court Liaison. In these situations, every effort should be made to assist in locating the member to be subpoenaed. Any issues with service related to a subpoena or notice will be directed to the police legal advisor.

(b) Approval of Court Overtime Compensation

Court Liaison, the member's supervisor, command officer(s) or Court Liaison Lieutenant is authorized to approve all off-duty overtime for appearances in court and at municipal administrative hearings. All overtime will be approved or denied in accordance with Directive 8.14 - Overtime Compensation.

(c) Subpoena Service- Hard Copies

Upon receipt of a subpoena or administrative notice, Court Liaison will log the following:

- a. The date the document was received.
- b. The location of the trial or hearing.
- c. The date and time of the trial or hearing.
- d. The name of the officer(s) and the name of the defendant.

(d) E-Subpoena

District and County prosecutorial subpoenas: Members will receive an email indicating that they have a subpoena. The first email received will require the

member to create a password. A default password is included in that first email. All subsequent subpoenas will be delivered via city email.

Upon receipt of the email indicating there is a subpoena, members are to log into the Colorado District Attorneys Council (CDAC) web site and acknowledge/accept the subpoena. Access to this web site is available on APD Links/District Court link. If there is a conflict such as bid vacation or a trial in another jurisdiction at the same time, please select "conflict." (IMPT: Refer to APD Directive 8.3(f) below - Court Conflicts for court precedence order). This will prompt the member to make remarks. It is important to be very detailed as to why the subpoena cannot be accepted. If, for example, the member is on a pre-approved vacation, it would be important to specify dates to include normal days off. This will assist the courts in rescheduling. If a subpoena is received for the same court/location, do not select conflict. Please notify the courts that the member is scheduled in two different courtrooms and they will arrange for your testimony.

If the e-subpoena has not been acknowledged by the member within 10 days of receipt, the Court Liaison office will be notified by email.

If the e-subpoena has not been acknowledged by the member within 10 days of the court date, a second email is sent to the Court Liaison office and the member's supervisor. The supervisor will contact the member to ensure his/her appearance for the court case.

Municipal subpoenas: Members will receive an email indicating that they have a subpoena for Municipal Court. Upon receipt of the email indicating there is a subpoena, members are to log into the Municipal Court subpoena web site and acknowledge/accept the subpoena. Access to this web site is available on APD Links/Subpoena-Municipal Court. Currently, Municipal Subpoenas cannot be accessed from a non-city computer. This may change in the future.

Acknowledging municipal subpoenas is consistent with responding to District and County court subpoenas; however, if there is a conflict with a Municipal Court subpoena, the member must call 303 739-7810 (leave a specific message with call back information if it goes to voice mail) to resolve the conflict. The member must have verbal approval from the City Attorney or District Attorney to be excused from the members subpoena. Leaving a message is not sufficient.

If the e-subpoena has not been acknowledged by the member within 10 days of receipt, the Court Liaison office will be notified by email. If the e-subpoena has not been acknowledged by the member within 10 days of the court date, a second email is sent to the Court Liaison office and the member's supervisor. The supervisor will contact the member to ensure his/her appearance for the court case.

(e) Leave Schedules

Members are responsible for completing the Leave Schedule Form (APD 520-383) during the bid process. The Leave Schedule Form will be provided to the Court Liaison office by a representative of the bid committee at the conclusion of the bid process. Patrol watch commanders and supervisors working the bid function will have to collect pre-planned vacation information from members for entry into the current leave system separate from the court Leave Schedule Form. Court Liaison will forward the Leave Schedule Form to the proper courts as soon as is practical. Additional Leave Schedule Forms can be submitted to Court Liaison by members to update planned leave dates at any time.

Court Liaison will maintain an up-to-date leave schedule and will forward any changes to the proper court.

When a case conflicts with a member's pre-approved leave, Court Liaison may assist the member with the required notifications to the appropriate court of jurisdiction. Members with a court date conflicting with a pre-approved leave or training outside the city of Aurora are responsible for securing a release from a subpoena from the appropriate court.

(f) Court Conflicts

Court Liaison will check the leave and training status of the member for possible conflicts. Court Liaison will upload the information into the current courts scheduling system. It is the members responsibility to notify Court Liaison of all conflicts. The member is responsible for checking the current court subpoena delivery system for subpoenas, at least once during each shift and for resolving subpoena schedule conflicts. Court Liaison will only report conflicts to the appropriate court. It is the member's responsibility to notify the courts when the member received a subpoena prior to the discovery of the conflict.

Members receiving two or more subpoenas to appear at the same time at different locations will decide which subpoena to honor and which will be requested for continuance. Conflicting subpoenas will be honored in the following precedence order:

- a. Federal Court
- b. District Court
- c. County Court
- d. Municipal Court
- e. Department of Revenue
- f. Social Services

- g. Civil Service/Career Service Subpoenas
- h. All Others

When a conflict occurs within the same court level (i.e., Adams District Court and Arapahoe District Court), the officer, with the assistance of Court Liaison and the affected courts, will decide which subpoena to honor based on the following considerations:

- a. The seriousness of the charges involved.
- b. The importance of the subpoenaed member's testimony.
- c. Date order in which the conflicting subpoenas were received.

The subpoenaed member will notify all involved courts of the conflict and of the location of the court he/she will be attending.

8.3.2 Not Available for Court

Court Liaison personnel will notify the court(s) issuing subpoena(s) of a member's non-availability in the following situations:

- a. Member has a pre-approved leave
- b. Member is scheduled for training outside the six county area.
- c. Member has a pre-approved "not available for court" work code entered on his/her schedule.

Only a command officer may approve a member to enter a "not available for court" work code to his/her schedule. Members may request to be "not available for court" when the request is:

- a. Normal days off contiguous with a scheduled leave
- b. Travel days associated with an approved outside training
- c. Special situations.

Secondary employment, birthdays and anniversaries are not considered "special situations" warranting approval of a "not available for court" request. Command officers exercising discretion in approving such requests, should do so in a judicious and prudent manner, remaining mindful of the potential impact on the courts.

Requests to be "not available for court" are only requests. If the member receives a subpoena for an approved not available date, the member is responsible for contacting the issuing court and securing a release from the subpoena. Court Liaison personnel will notify the court of the conflict.

8.3.3 Member Duties and Responsibilities**(a) Acceptance of Subpoenas**

It is the duty of every member to accept service of criminal or civil subpoenas or administrative notices that are work-related and to appear as directed. Members will not intentionally evade service of work-related subpoenas. All members will check for service of new subpoenas on each of his/her duty days, by checking e-mail and his/her mailbox. If there is any document in his/her mailbox addressed to them, they will accept service. Upon reviewing the subpoena, the member must either accept or conflict.

Members under subpoena or receiving telephone notification from Court Liaison, court, prosecutorial personnel or a supervisor, will appear as directed. Even if it is short notice.

(b) Officers Subpoenaed by defense or party adverse to the city/department

The prosecuting attorney, City Attorney, Police Legal Advisor, and the police department do not have control over the defense or adverse party subpoena process. When a member receives a request to testify, or is subpoenaed to appear by defense counsel in a criminal case, or by a party adverse to the city/department in a civil case or administrative hearing, the member will immediately notify his or her supervisor, division chief, the Police Legal Advisor or, if not available, the City Attorney and provide a copy of the subpoena, or request if in writing. E-mail notification is appropriate and preferred. All members receiving a request or subpoena shall appear as directed or risk contempt proceedings by the presiding judge or hearing officer. If a member believes he/she is being subpoenaed improperly, that member should discuss such belief with the Police Legal Advisor or his/her own counsel prior to the appearance date.

Members may, on their own behalf, attempt to contact the attorney issuing the subpoena or request, and make individual arrangements with the attorney. Vacations, military leave, sick leave and/or time off are not justifiable reasons for failure to comply with subpoenas.

Any such arrangement shall be documented in writing and will be forwarded to the Court Liaison Office.

(c) Appearance in Court

All members appearing in court will be punctual, conform to the court's rules of conduct, and obey all orders of the court.

Officers appearing in court on-duty will wear the department duty uniform or the specialty uniform approved for wear for the officer. This does not include the department approved “soft uniform”, (khaki pant and polo shirt) which is authorized in some assignments. Specialty uniforms (BDUs) worn by members in SWAT, K9 or other similar units may be worn in court by officers who are assigned to those units. The ball cap authorized for wear with the duty uniform will not be worn in court. Sworn members approved to wear non-uniform attire and off-duty officers appearing in court will wear the department duty uniform or business attire that adheres to Directive 08.01 Uniform and Attire Requirements.

Appearance in Municipal Court

When a member receives a Municipal Subpoena to appear at 0800 for a Jury Trial on Tuesdays or Thursdays, it is the discretion of the member if they want to appear in court at the specified time or wait until called by a representative of the municipal court or court liaison staff advising the member they need to appear in Municipal Court.

If the member elects NOT to appear at 0800, they have placed themselves in an on-call status and the member must:

1. Be able to respond and arrive at the municipal court within 30 minutes of being called by either Court Liaison or Municipal Court staff.
2. Be available by phone from 0800 until 1030
3. Have a current and valid telephone number in Apps, and the member must be available and must answer his/her phone during the on-call period.
4. Be able to talk to the staff of the court or court liaison when they are called. A message will not be left.
5. Be able to meet these parameters. If these parameters cannot be met, the officer may not be placed on call, and must appear in the municipal court at the time specified on his or her subpoena.

If the member has not been contacted by a representative of municipal court or court liaison staff by 1030, then the member will be considered released from his or her subpoena for that day.

Members will not be paid overtime if they ELECT to be available by phone, and do not appear at 0800.

Members may also call the Municipal Court Code A-Phone at 303-739-7824 beginning at 0840 to see if his/her case has been called off. If the members specific case is not included on the Code-A-Phone, the case has not been called off and the member remains on call until 1030.

Weapons

Unless restricted to an unarmed duty assignment, officers will carry weapons when attending **Aurora Municipal Court**, whether the officer is in plain clothes or uniform. The Chief of Police may authorize exceptions to this requirement.

Officers attending **Adams County Court** in uniform and on official business are allowed to carry weapons. Non-uniformed officers attending Adams County Court on official business are allowed to carry weapons as long as his/her department identification card is worn in plain view on his/her outer garment.

Weapons may be worn, carried or displayed by officers in uniform or plain clothes **while attending other county, district, or federal court** if permitted by the court. Weapons will be properly secured before entering any courtroom if the carrying of the weapon is not permitted

On-duty officers appearing for a job-related deposition or other legal proceeding at private law offices or other private property will not surrender his/her weapon upon the demands of any party. If the person making the demand (i.e. a private attorney) uses threats of court orders or other action in an attempt to coerce surrender of the member's weapon, the member will not engage in an argument with that person. Instead, the member will immediately notify the Chief's office for assistance and direction on how to proceed. The Police Legal Advisor or City Attorney's Office may also be consulted.

- (d) Members will notify Court Liaison immediately, through the chain of command, of any change in his/her original leave schedule. This notification will be made on form APD FM 520-383. A member's failure to make notification could result in any request for continuances being denied by department personnel when leave conflict is cited as the reason for the request.
- (e) Members using sick leave when scheduled for a court appearance must call the appropriate court to report his/her absence. Members will provide the defendant's name, division number, time and summons or court case number when making notification. Members on emergency leave and under subpoena for any court must notify Court Liaison to report his/her absence.
- (f) Members are responsible for resolving any court conflicts with the court of jurisdiction and for ensuring all affected courts are notified. Members may contact court liaison for contact phone numbers of the different courts.

- (g) Members on injury leave when scheduled for a court appearance refer to Directive 15.10.6 - Administrative Schedule.

8.3.4 Members Appearing Late or Failure to Appear

- (a) When Court Liaison is made aware of a member failing to appear for a court proceeding or the member appeared for the court proceeding late, a notice will be sent to the Property Section lieutenant or designee. The Property Section lieutenant or designee will enter the officer's failure to appear or the member appearing late into the current personnel system to be sent to the members supervisor. The member's supervisor will investigate to determine the reason for the failure to appear and if it is excused or non-excused. The member's supervisor will document his/her finding in the current personnel system and ensure the member's commander is tracked with his/her findings.

An example of an excused absence would be:

- a. Sudden death in the family
- b. The member being involved in a vehicle accident
- c. The member being involved in a critical incident, such as an officer-involved shooting
- d. The member or a family member being ill with a doctor's note

Examples of unexcused absence:

- a. The member or a family member being ill without a doctor's note
- b. Lack of child care
- c. In-service

- (b) Failure to attend court or being late for court

The following will be the minimum penalties for the unexcused failing to appear or appearing late in court within a two-year period (24 months prior to the last unexcused missed court occasion). Impact on the case is not a determining factor in being excused or not. Flagrant violations may be dealt with more severely:

- a. First Offense: Supervisory counseling documented in the current personnel software system with a performance appraisal entry (PAE) and a purpose type of missed court.
- b. Second Offense within 24 months: Corrective Action documented in the current personnel software system.
- c. Third Offense within 24 months: Written Reprimand documented in the current personnel software system.

- d. Fourth or more offenses within 24 months will be forwarded to the Internal Affairs Bureau.

8.3.5 Procedure for Requesting Continuances or Dismissals

Department policy strongly discourages its members from requesting continuances or dismissal of court cases. However, there are situations when a request is proper. Members who believe they have a request that is acceptable will adhere to the following:

Continuances:

- (a) The member making the request will prepare a memorandum specifying the reason for the request, the court, date and time of the appearance, defendant's name, and the docket number, if applicable. The memorandum will be forwarded through the chain of command to the member's command officer.
- (b) Requests that do not provide an acceptable reason will be denied and returned to the submitting member, who will appear in court as scheduled.
- (c) When a request is approved, the member is responsible for making arrangements to meet with the appropriate prosecuting attorney.

Dismissals:

- (a) The member making the request will prepare a memorandum specifying the reason for the request, and include the court, date and time of appearance, the defendant's name and docket number, if applicable. Requests for dismissal will only be granted if it is in the best interest of the department. The request will be forwarded through the chain of command to the Chief of Police or designee for approval.
- (b) Requests that are approved will be returned to the member, who will contact the appropriate prosecuting attorney's office.
- (c) Requests that are not approved will be returned to the member making the request, who will appear as scheduled.

8.3.6 Rescheduling Duty Hours to Accommodate a Court Appearance Inside the Six County Area (Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson)

Command staff reserves the right to change assigned work schedules and/or days off within a work cycle as occasioned by special assignments or appearances. Compensation will be awarded for assigned work hours regardless of the nature or location of the assignment. Work shifts will be adjusted on a daily basis to reflect the maximum inclusive hours related to a court appearance so as to fall within the daily work shift. Court related work will include trial preparation with counsel or investigators, court appearances including testimony and may include travel time. Work shifts will be adjusted to include as much travel time, court time and trial preparation meetings as possible.

8.3.7 Court Appearances Out of State

When members receive subpoenas from out of state, the travel expenses, room accommodations and meals are usually covered by the agency or party subpoenaing the member. If the agency or party is unwilling to pay the expenses, the member should bring this matter to the attention of his/her supervisor.

Unless the out-of-state court appearance is work-related for the member as an Aurora Police Officer, the department is not responsible for ensuring members attend court out of state, although it does recognize a professional responsibility to have members honor those subpoenas when possible. When a member receives a subpoena requiring an out of state court appearance, he/she will bring this to the attention of his/her supervisor and advise him/her of member's intention with regard to that subpoena. The member's supervisor will make the necessary schedule adjustments prior to the member's scheduled court appearance. Typically, the department will not pay straight time or overtime for a member to appear in court out of state unless the court appearance is work-related to Aurora police work.

The department will adjust the member's work schedule when possible to allow the member to honor the subpoena. Members may accept any witness fees offered to them by the subpoenaing agency. Any additional reimbursement for the member's time is the responsibility of the subpoenaing agency.

If a member returns from an out of state court assignment and the number of hours spent in court and travel time is less than the member's normal work shift, the member will report, upon his/her return, to his/her command officer. The command officer has the option of having the member complete the remainder of the work shift, which began when the member left for court. The work shift will not be split.

8.3.8 In-State Court Appearances Outside the Six County Area (Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson)

Members receiving subpoenas from agencies outside the six county area but within the State of Colorado are required by law to honor those subpoenas.

Generally, the subpoenaing agency will compensate the member for expenses. If the agency will not cover those expenses, the member should bring this matter to the attention of his/her division chief.

When members receive a subpoena outside the six county area, they will notify his/her supervisor so that work shifts may be adjusted in accordance with this directive, to accommodate the court appearance.

If a member returns from a court assignment outside the six county area, and the number of hours spent in court and travel is less than the members normal work shift, the member will report upon his/her return to his/her command officer. The command officer has the option of requiring the member to complete the remainder of the shift, which began when the member left for court. The work shift will not be split.

8.3.9 Department of Revenue (DOR) Testimony

Members under subpoena to provide testimony in an Express Consent Hearing are required to appear at the Department of Revenue for the hearing.

The DOR hearing officer will allow all parties under subpoena five minutes past the scheduled hearing time to appear prior to entering an FTA, unless prior notice is given and approved.

Members may receive a DOR subpoena allowing them to appear by phone. Members must call the current DOR phone line within 15 minutes prior to the time on the subpoena to check-in for the hearing, provide a phone number and remain available for a return call from the hearing officer. If a member is in an off-duty status and either appears or is involved in a phone hear for an Express Consent Hearing the member will submit a request for overtime payment or compensatory time through the current attendance system to be approved by the members supervisor.

It is possible that a member could simultaneously participate in an Express Consent hearing by phone while awaiting an appearance for another court subpoena. Members cannot submit separate overtime requests for simultaneous court cases.

8.3.10 Leave and Court Appearances

When a member is on leave and either the court appearance or the member's travels have him or her outside of the six county area, and the member scheduled leave prior to receiving official notification or the subpoena, the following will apply:

- (a) The member will return to an on-duty status and his/her schedule will be adjusted to accommodate the court appearance as described in this Directive.
- (b) A replacement leave day will be given to the member for each court related workday. The member may add that day to the interrupted leave or use it at a later time.
- (c) The member is required to obtain a signature from either the court clerk or attorney indicating he/she honored the subpoena.

If the member is on leave and neither the trial nor the member is outside the six county area, it will be treated as regular court overtime as described in Directive 8.14 Overtime Compensation. In this case a replacement vacation day will not be given.

8.3.11 Exceptional Circumstances

On rare occasions, there may be delays that are related to a court appearance that are not the fault of the member, such as delays due to weather, flight conditions, etc. These will be considered on a case-by-case basis. The member's supervisor may adjust the member's schedule, but this schedule adjustment is not mandatory and should not necessarily be expected.

8.3.12 Disputes

Disputes about whether or not a member is entitled to compensation with regard to an out of state or outside the six county area court appearance that is not clearly defined in this directive will be handled in strict accordance with FLSA.

8.3.13 Leave Requests

Leave or training will not be approved when a pre-existing court subpoena appears on the member's schedule. Members may ask for the request to remain in the system as an annotation to staffing considerations while they attempt to secure a release from the subpoena. However, when staffing becomes an issue, requests for leave will be approved in the order in which they are received from the first eligible member. If placed on call, the member must answer the phone and respond within an acceptable amount of time.